

## CCRB INVESTIGATIVE RECOMMENDATION

|                                                  |                                                                                  |                                     |                                                       |                                    |                                 |
|--------------------------------------------------|----------------------------------------------------------------------------------|-------------------------------------|-------------------------------------------------------|------------------------------------|---------------------------------|
| Investigator:<br>Shadman Khan                    | Team:<br>Squad #12                                                               | CCRB Case #:<br>202001336           | <input checked="" type="checkbox"/> Force             | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S.   |
|                                                  |                                                                                  |                                     | <input checked="" type="checkbox"/> Abuse             | <input type="checkbox"/> O.L.      | <input type="checkbox"/> Injury |
| Incident Date(s)<br>Monday, 02/17/2020 8:15 PM   | Location of Incident:<br>Sutphin Boulevard between Archer Avenue and 91st Avenue | Precinct:<br>103                    | 18 Mo. SOL<br>8/17/2021                               | EO SOL<br>4/3/2022                 |                                 |
| Date/Time CV Reported<br>Tue, 02/18/2020 1:59 PM | CV Reported At:<br>CCRB                                                          | How CV Reported:<br>On-line website | Date/Time Received at CCRB<br>Tue, 02/18/2020 1:59 PM |                                    |                                 |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
|                    |      |              |

| Subject Officer(s)  | Shield | TaxID  | Command |
|---------------------|--------|--------|---------|
| 1. POM Paul Petrone | 30070  | 967254 | 103 PCT |
| 2. POM Cody Duffy   | 06180  | 966549 | 103 PCT |

| Witness Officer(s)    | Shield No | Tax No | Cmd Name |
|-----------------------|-----------|--------|----------|
| 1. POM Sean McGowan   | 23735     | 966205 | 103 PCT  |
| 2. POM Frank Taormina | 24736     | 965556 | 103 PCT  |

| Officer(s)            | Allegation                                                                            | Investigator Recommendation |
|-----------------------|---------------------------------------------------------------------------------------|-----------------------------|
| A.POM Cody Duffy      | Abuse: Police Officer Cody Duffy stopped § 87(2)(b)                                   |                             |
| B.POM Paul Petrone    | Abuse: Police Officer Paul Petrone stopped § 87(2)(b)                                 |                             |
| C.POM Cody Duffy      | Abuse: Police Officer Cody Duffy threatened § 87(2)(b) with the use of force.         |                             |
| D.POM Cody Duffy      | Force: Police Officer Cody Duffy pointed his gun at § 87(2)(b)                        |                             |
| E.POM Paul Petrone    | Force: Police Officer Paul Petrone pointed his gun at § 87(2)(b)                      |                             |
| F.POM Cody Duffy      | Abuse: Police Officer Cody Duffy frisked § 87(2)(b)                                   |                             |
| G.POM Cody Duffy      | Abuse: Police Officer Cody Duffy searched § 87(2)(b)                                  |                             |
| H.POM Paul Petrone    | Abuse: Police Officer Paul Petrone failed to provide § 87(2)(b) with a business card. |                             |
| I.POM Cody Duffy      | Abuse: Police Officer Cody Duffy failed to provide § 87(2)(b) with a business card.   |                             |
| § 87(4-b), § 87(2)(g) |                                                                                       |                             |
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|                       |                                                                                       |                             |

| Officer(s)            | Allegation | Investigator Recommendation |
|-----------------------|------------|-----------------------------|
| § 87(4-b), § 87(2)(g) |            |                             |

### Case Summary

On February 18, 2020, § 87(2)(b) filed this complaint through the CCRB online website.

On February 17, 2020, at approximately 8:15p.m., on Sutphin Boulevard between Archer Avenue and 91<sup>st</sup> Avenue in Queens, PO Cody Duffy and PO Paul Petrone from the 103<sup>rd</sup> Precinct stopped § 87(2)(b) (**Allegation A – Abuse of Authority: Stop,** § 87(2)(g) (**Allegation B – Abuse of Authority: Stop,** § 87(2)(g)). PO Duffy stated, “I’ll shoot you” (**Allegation C – Abuse of Authority: Threat of Force,** § 87(2)(g)). Once § 87(2)(b) turned around, he saw PO Duffy and PO Paul Petrone from the 103<sup>rd</sup> Precinct with their firearms pointed toward him (**Allegation D: Force: Gun Pointed,** § 87(2)(g) (**Allegation E: Force: Gun Pointed,** § 87(2)(g)). Once § 87(2)(b) put his hands up, both officers holstered their weapons and approached § 87(2)(b) where PO Duffy ran his hands along § 87(2)(b)s shoulders, front of the jacket, down the pant legs, pant pockets and placed his fingers inside § 87(2)(b)s jacket pockets and pant waistband (**Allegation F: Abuse of Authority: Frisk,** § 87(2)(g) (**Allegation G: Abuse of Authority: Search of person,** § 87(2)(g) § 87(2)(b) asked both PO Duffy and PO Petrone for their business cards but neither officer responded or provided him with a card (**Allegation H: Abuse of Authority: Failure to provide RTKA card,** § 87(2)(g) (**Allegation I: Abuse of Authority: Failure to provide RTKA card,** § 87(2)(g) § 87(2)(b) was not arrested or given a summons as a result of this incident.

§ 87(2)(g), § 87(4-b)

Security footage from the Long Island Railroad Jamaica station was received for this complaint (Board Review 06-09) but did not capture the incident.

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Police Officer Cody Duffy stopped** § 87(2)(b)  
**Allegation (B) Abuse of Authority: Police Officer Paul Petrone stopped** § 87(2)(b)  
**Allegation (C) Abuse of Authority: Police Officer Cody Duffy threatened** § 87(2)(b) **with the use of force.**

It is undisputed that on February 17, 2020, at approximately 8:15 p.m., in the vicinity of Sutphin Boulevard and between Archer Avenue and 91<sup>st</sup> Avenue in Queens, PO Duffy and PO Petrone approached and spoke to § 87(2)(b)

In § 87(2)(b)s statement to the CCRB (Board Review 01), he stated that he had been walking along Archer Avenue with a camera and a collapsed tripod on his shoulder. The tripod was approximately two feet in length, the end of which stopped at § 87(2)(b)s mid thigh. As § 87(2)(b) walked down Sutphin Boulevard between Archer Avenue and 91<sup>st</sup> Avenue toward 92<sup>nd</sup> Avenue, he heard a voice that instructed him to put his hands up. The voice also stated, “I’ll shoot you.” § 87(2)(b) did not initially know who the voice was speaking to. When § 87(2)(b) turned around, he saw PO Duffy and PO Petrone. § 87(2)(b) described one of the officers as an approximately 5’9” tall skinny white male with no facial hair and short hair and dressed in uniform.

§ 87(2)(b) identified this officer as the one who made the statements. § 87(2)(b) described the other officer as a heavier, possible white male with black middle-length hair and under 30 years old.

In PO Duffy's statements to the CCRB (Board Review 02, 23), he was in the driver seat of his vehicle when he first observed § 87(2)(b) on Sutphin Boulevard and Archer Avenue, closer to 91<sup>st</sup> Avenue. PO Duffy recalled that § 87(2)(b) had a megaphone and had been stating, "Fuck the police," and other negative statements about the police through the megaphone. § 87(2)(b) had been standing in a way that backlit and only his silhouette could be seen from PO Duffy's perspective. § 87(2)(b) stood less than 100 feet away from PO Duffy. An unidentified individual stated something to the effect of, "He has a rifle on his back," or, "He has a gun," which led PO Duffy to believe § 87(2)(b) may have had a firearm. PO Duffy did not specify how he knew these comments were in regards to § 87(2)(b). PO Duffy attempted to determine if § 87(2)(b) had a firearm on his back but was unable conclude if § 87(2)(b) had a firearm in his possession from where he was. PO Duffy and PO Petrone exited their vehicle and approached § 87(2)(b). PO Duffy did not recall if he or PO Petrone instructed § 87(2)(b) to stop. Neither PO Duffy nor PO Petrone threatened to shoot § 87(2)(b). PO Duffy was twenty to thirty feet away from § 87(2)(b) when he realized that he did not have a weapon on his back. PO Duffy decided to continue and interact with § 87(2)(b) because he wished to double check with him and confirm that the object on his back was not a firearm. PO Duffy was approximately ten feet away from § 87(2)(b) when he inquired about the object on his back, which § 87(2)(b) informed him was just a camera. PO Duffy also informed § 87(2)(b) that people thought he had a firearm on his back. According to PO Duffy, § 87(2)(b) was free to go during this entire interaction.

In PO Petrone's statements to the CCRB (Board Review 03, 24), he stated that he and PO Duffy were present at Sutphin Boulevard and Archer Boulevard when he noticed a male stating, "Fuck the police," and other negative statements about the police through a megaphone. PO Petrone heard multiple civilians yelling, "Does he have a gun?" and, "He has a gun." PO Petrone believed this was in reference to § 87(2)(b) because he was the only person that came into the area. PO Petrone was one to two blocks away from § 87(2)(b) at the time. PO Petrone saw a silhouette on § 87(2)(b)'s back and believed it to be a firearm. PO Petrone also stated that the only thing obstructing him from determining the object on § 87(2)(b)'s back was not a weapon was the dim lighting conditions. However, once PO Petrone was 20 feet away from § 87(2)(b) he determined that the item on his back was not a firearm. Both PO Petrone and PO Duffy approached § 87(2)(b). § 87(2)(b) apologized for bothering him, and informed him that it appeared as if he had a firearm on his back. PO Petrone did not recall how far he was from § 87(2)(b) when he first spoke to him. § 87(2)(b) stated the object was not a gun and was a camera. PO Petrone § 87(2)(g) reiterated that neither officer instructed § 87(2)(b) to stop nor threatened to shoot him.

The investigation received the roll call for the 103<sup>rd</sup> Precinct generated for February 17, 2020 (Board Review 05). The roll call listed PO Duffy and PO Petrone as the officers assigned to Sutphin Boulevard and Archer Avenue.

The investigation received NYPD Officer Photographs for PO Duffy and PO Petrone (Board Review 15). PO Duffy's photograph listed him as an approximately 6'0" tall, 189-pound white male with short brown hair, medium build, and under 30 years old. PO Petrone's photograph listed him as an approximately 5'11" tall, 215-pound white male with short brown hair, a heavy build, and under 30 years old.

§ 87(2)(g)

The investigation received a Stop and Frisk log listing UF250 reports generated for stops that occurred on February 17, 2020 in the 103<sup>rd</sup> Precinct (Board Review 04). The log listed three stops made on the date of the incident. All three stops were conducted at Liberty Avenue and 170<sup>th</sup> Street around 3:46p.m. None of these stops matched the time and location of this incident.

The investigation did not receive any BWC for this complaint (Board Review 13-14). Neither PO Duffy nor PO Petrone recorded footage on their BWC during the time of the incident.

The investigation received security footage from the Long Island Railroad Jamaica Station recorded on February 17, 2020. The footage depicts a police vehicle at the intersection of Sutphin Boulevard and Archer Avenue, but do not otherwise provide any relevant information.

The investigation received PO Duffy's and PO Petrone's Memo Books generated for the date of this incident (Board Review 19-20). There were no entries for this incident in either memo book.

A person is guilty of criminal possession of a firearm when he or she possesses any firearm. Penal Code 265.01-B: Criminal Possession of a Firearm (Board Review 16).

A common law right of inquiry between a civilian and officer can be conducted for the purpose of asking the civilian pointed or accusatory questions based on a "founded suspicion" that there is criminal activity. Upon founded suspicion, an officer may approach and question the civilian, but must obtain consent if they wish to search them. A stop may be conducted when an officer has reasonable suspicion that the person has committed, is committing, or about to commit a Penal Law misdemeanor. Patrol Guide Procedure 212-11: Investigative Encounters (Board Review 17).

§ 87(2)(g)

PO Duffy informed the CCRB that he first realized that the object on § 87(2)(b)'s back was not a firearm when he was 30 feet away from § 87(2)(b). PO Duffy stated that he made this determination before he spoke with § 87(2)(b) but that he proceeded to question § 87(2)(b) because he wanted to confirm that the item was not a firearm. PO Petrone stated that he did not

determine that the item on § 87(2)(b)'s back was a firearm until the officers spoke with § 87(2)(b) and he was within 20 feet of § 87(2)(b) § 87(2)(g)

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**Allegation (D) Force: Police Officer Cody Duffy pointed his gun at § 87(2)(b)**

**Allegation (E) Force: Police Officer Paul Petrone pointed his gun at § 87(2)(b)**

According to § 87(2)(b) after he heard a voice that instructed him to put his hands up and threatened to shoot him, he turned around and saw two officers behind him. PO Duffy stood in front of a store called Jamaica Green Grocery while PO Petrone stood slightly behind PO Duffy. PO Duffy brought a firearm up from his hip and pointed it toward § 87(2)(b) PO Petrone also had his firearm pointed toward § 87(2)(b) Once § 87(2)(b) put his hands up in the air, both officers holstered their weapons and approached him.

In PO Duffy's statement, he stated that he stood approximately 20 feet away from § 87(2)(b) when he first spoke to him and asked what was on his back. From that distance, PO Duffy was able to see that the object on § 87(2)(b)'s back was a camera. § 87(2)(b) also stated that the object on his back was a camera. PO Duffy did not state why it was necessary to speak to § 87(2)(b) after determining what the object on his back was. PO Duffy and PO Petrone both explained why they approached § 87(2)(b) who responded that he understood and that they had jobs to do.

In PO Petrone's statement, he stated that both he and PO Duffy calmly approached § 87(2)(b) and verified that the item strapped to § 87(2)(b)'s back was not a firearm. PO Petrone did not explicitly state how he determined the object was not a firearm. Both PO Petrone and PO Duffy informed § 87(2)(b) that it appeared as if he had a firearm on his back and apologized for bothering him.

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**Allegation (F) Abuse of Authority: Police Officer Cody Duffy frisked § 87(2)(b).**

**Allegation (G) Abuse of Authority: Police Officer Cody Duffy searched § 87(2)(b).**

According to § 87(2)(b) after the officers holstered their weapons, they approached § 87(2)(b). PO Duffy ran his hands along § 87(2)(b)'s shoulders and the front of his jacket. PO Duffy then placed his fingers inside of the jacket pockets. PO Duffy ran his fingers along § 87(2)(b)'s waistband, ran his hands down his pant legs, and patted the outside of his pant pockets. PO Duffy patted the rear pocket of § 87(2)(b)'s pants, removed his wallet, and then returned it. During the search, PO Petrone apologized and stated they believed he had a firearm.

According to PO Duffy, after he and PO Petrone explained why they approached him, § 87(2)(b) stated that he understood. § 87(2)(b) then shook hands with PO Duffy. PO Duffy did not state when he moved less than 20 feet away from § 87(2)(b). The entire interaction with § 87(2)(b) lasted approximately 30 seconds. PO Duffy did not make any other physical contact with § 87(2)(b) other than shaking hands. PO Duffy did not make any contact with § 87(2)(b)'s clothing or remove anything from § 87(2)(b)'s pocket.

According to PO Petrone, after both officers apologized to § 87(2)(b) for bothering him, PO Petrone shook his hand but did not have any other physical interaction with him. PO Duffy also shook § 87(2)(b)'s hand, but PO Petrone did not see him have any other physical interaction with § 87(2)(b).

§ 87(2)(g)

**Allegation (H) Abuse of Authority: Police Officer Paul Petrone failed to provide § 87(2)(b) with a business card.**

**Allegation (I) Abuse of Authority: Police Officer Cody Duffy failed to provide § 87(2)(b) with a business card.**

§ 87(2)(b) stated that after the search, § 87(2)(b) asked PO Duffy and PO Petrone for their business cards. Neither officer responded to the request; the officers walked back to their vehicle.

According to PO Duffy, § 87(2)(b) never requested a name, shield number, or business card from PO Duffy or PO Petrone during the incident. § 87(2)(b) did not ask for any information in general.

According to PO Petrone, § 87(2)(b) did not request either officer's name, shield number, or business card from either officer. § 87(2)(b) did not complain about anything that occurred.

A business card is to be offered for any law enforcement activity, except in cases where a summons is issued, or an arrest is made. A noncustodial questioning of individuals suspected of criminal activity, a level 2 encounter, is considered a law enforcement activity. During such activity, an officer must clearly state their name, shield, and rank, or otherwise provide them, explain the reason for the law enforcement activity, and provide a clearly printed business card. Patrol Guide Procedure 203-09: Public Contact – General (Board Review 18).

Both PO Duffy and PO Petrone stated that they had interacted with § 87(2)(b) and asked him

questions because they were unable to determine if he had a firearm on him. § 87(2)(g)

[REDACTED]

§ 87(2)(g), § 87(4-b)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



§ 87(4-b), § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

### Civilian and Officer CCRB Histories

- The is the first CCRB case to which § 87(2)(b) [REDACTED] has been a party (Board Review 11).
- PO Petrone has been a member-of-service for two years and has been the subject of three CCRB complaints and eight allegations, none of which have been substantiated. § 87(2)(g) [REDACTED]
- PO Duffy has been a member-of-service for two years and has been the subject of five CCRB complaints and 14 allegations, none of which have been substantiated. § 87(2)(g) [REDACTED]

**Mediation, Civil and Criminal Histories**

- § 87(2)(b) declined to mediate this complaint.
- As of February 2, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (Board Review 12).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]

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Squad No.: 12

|               |                     |                                  |                     |
|---------------|---------------------|----------------------------------|---------------------|
| Investigator: | <u>Shadman Khan</u> | <u>Investigator Shadman Khan</u> | <u>May 20, 2021</u> |
|               | Signature           | Print Title & Name               | Date                |

|               |                         |                            |                          |
|---------------|-------------------------|----------------------------|--------------------------|
| Squad Leader: | <u>Carlmais Johnson</u> | <u>IM Carlmais Johnson</u> | <u>December 27, 2021</u> |
|               | Signature               | Print Title & Name         | Date                     |

|           |           |                    |       |
|-----------|-----------|--------------------|-------|
| Reviewer: | _____     | _____              | _____ |
|           | Signature | Print Title & Name | Date  |